



United States Department of the Interior

OFFICE OF THE SECRETARY

Washington, DC 20240

IN REPLY REFER TO:
7202.4-OS-2018-01470

September 30, 2019

Via email: 58976-62277911@requests.muckrock.com

Mr. Jimmy Tobias
MuckRock News
DEPT MR 58611
411A Highland Avenue
Somerville, MA 02144

Dear Mr. Tobias:

On August 3, 2018, you filed a Freedom of Information Act (FOIA) seeking the following:

All written or electronic communications, including attachments, between deputy director of external affairs Tim Williams, or his executive assistant(s), and any agent, representative or employee of the Sutherland Institute, a Utah based think tank. This request includes any and all communications between Williams, or his executive assistant, and any email address that ends in "@sifreedom.org". This request also seeks any communication between Tim Williams (or his assistant Jason Funes) and Sutherland Institute employee Matthew Anderson. This request seeks records produced between April 1, 2017 and the date this request is processed.

Your request was received in the Office of the Secretary FOIA office on August 03, 2018, and assigned control number **OS-2018-01470**. Please cite this number in any future correspondence or communications with the Office of the Secretary regarding your request. We are writing today to provide an interim response to your request on behalf of the Department of the Interior. The Office of the Secretary FOIA office reviewed 588 pages and found 27 pages were duplicative. Please find attached one (1) file consisting of 561 pages. Of those 561 pages, 558 pages are being released in full and three (3) pages contain redactions as described below.

Portions of the enclosed documents have been redacted pursuant to Exemption 5 of the FOIA (5 U.S.C. § 552 (b)(5)) under the following privileges:

Confidential Commercial Information

Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency" 5 U.S.C. § 552 (b)(5). As such, the Exemption 5 "exempt[s] those documents... normally privileged in the civil discovery context." National Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975). The

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exemption incorporates the privileges that protect materials from discovery in litigation. These privileges include deliberative process, confidential commercial information, attorney work-product, and attorney-client. See id.; see also Federal Open Market Committee v. Merrill, 443 U.S. 340, 363 (1979) (finding a confidential commercial information privilege under Exemption 5).

Confidential Commercial Information Privilege

When the government enters the marketplace as an ordinary commercial buyer or seller, the government information is protected from competitive disadvantage under Exemption 5. Government Land Bank v. General Services Administration, 671 F.2d 663, 665 (1st Cir. 1982). Exemption 5 prevails “where the document contains ‘sensitive information not otherwise available,’ and disclosure would significantly harm the government’s commercial interest.” Id. at 666; see also Merrill, 443 U.S. at 363.

Pursuant to the confidential commercial information privilege, conference call codes and passcodes have been withheld under Exemption 5. This information constitutes “intra-agency” documents because they are only shared with members of the Department of the Interior for the purpose of conducting official government business. Moreover, this information qualifies as “confidential commercial information” because the government entered the marketplace as an ordinary commercial buyer.

In line with Land Bank and Merrill, the information is “sensitive and not otherwise available.” If the information was released, the government’s financial interest would be significantly harmed. The conference calls would no longer be private since unknown, non-governmental parties would have the ability to listen in to the calls. The funds spent on purchasing the information would therefore be wasted, and the information would be of no use.

Because we reasonably foresee that the release of this information would significantly harm the government’s financial interest by publicizing sensitive information, the Office of the Secretary is withholding it in accordance with Exemption 5 of the FOIA.

Tony Irish, Attorney-Advisor, in the Office of the Solicitor, was consulted in reaching this decision. . Leah Fairman, Office of the Secretary FOIA Office, is responsible for making this decision.

Sincerely,

Leah Fairman
Office of the Secretary
FOIA Office